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August 4, 1997

BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

Re: MCI's Petition Pursuant to Section 252(e)(5)
Seeking to Preempt the Jurisdiction of the Missouri
Public Service Commission — CC Docket No. 97-166

Dear Mr. Caton:

Please find enclosed the original and eleven copies of the Response of Southwestern Bell Telephone Company in Opposition to MCI's Preemption Petition in the above captioned matter. I have also sent a copy to both Janice Myles of the Common Carrier Bureau and to ITS, Inc., as requested in the Public Notice of July 24, 1997.

Please stamp and return the extra copy to the individual delivering these materials.

Sincerely,

Geoffrey M. Klineberg

Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc.'s Petition Pursuant to Section 252(e)(5) Seeking to Preempt the Jurisdiction of the Missouri Public Service Commission	CC Docket No. 97-166

RESPONSE OF SOUTHWESTERN BELL TELEPHONE COMPANY IN OPPOSITION TO MCI'S PREEMPTION PETITION

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EXECUTIVE SUMMARY

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. ("MCI") have filed a petition seeking to preempt the jurisdiction of the Missouri Public Service Commission ("MPSC") over all proceedings concerning the negotiation, arbitration, and approval of an interconnection agreement with Southwestern Bell Telephone Company ("SWBT"). MCI rests its argument that the MPSC has "fail[ed] to act" within the meaning of section 252(e)(5) of the Communications Act on the claim that MCI presented many issues for arbitration that the MPSC simply refused to resolve. But this is false. The MPSC resolved every issue that was properly presented to it; with respect to all other issues, it directed the parties to negotiate. As the petitioning party, MCI had the responsibility under 47 U.S.C. § 252(b)(2) of clearly identifying the unresolved issues to the State commission and providing all necessary information concerning "the position of each of the parties with respect to those issues." Instead, MCI attached a 150-page, incomplete draft agreement to the written testimony of one of its witnesses, apparently expecting that the MPSC would read through it and then identify and resolve each of the hundreds of issues buried inside it, without even knowing SWBT's position with respect to any of them. The Communications Act unambiguously imposes the requirement on the petitioning party — in this case, MCI — to set forth the unresolved issues and to provide the position of each party. It was MCI, not the MPSC, that failed to comply with the requirements of the Communications Act.

Because MCI had been concerned exclusively with negotiations over an interconnection agreement in Texas, there had been no negotiations in Missouri by the time MCI sought arbitration before the MPSC. MCI spent nearly the entire 135-day negotiation period arguing with SWBT over the terms of a nondisclosure agreement that had been found acceptable by every

other company with whom SWBT had negotiated. Faced with the fact that substantive negotiations had not even begun by the time of the deadline for seeking arbitration, the MPSC resolved all arbitrated issues and then directed the parties to negotiate a final agreement in compliance with the arbitration order. Beginning in February 1997, MCI finally began to negotiate in earnest with SWBT; since then, considerable progress toward a negotiated agreement has been made. The process has finally begun to work.

Over the past six months, the MPSC has been extremely busy analyzing competing cost models in its effort to establish permanent rates for unbundled network elements and resale, culminating in the issuance of its Final Arbitration Order on July 31, 1997. In light of the time and effort that the MPSC has already devoted to facilitating the resolution of outstanding interconnection issues, MCI's complaints that the MPSC has failed to carry out its responsibilities under the Communications Act are particularly inappropriate. MCI is almost entirely responsible for any delay in reaching an interconnection agreement in Missouri. This Commission has no reason whatsoever to preempt the jurisdiction of the MPSC under section 252(e)(5).

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Federal Communications Commission
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In the Matter of

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc.'s Petition Pursuant to Section 252(e)(5) Seeking to Preempt the Jurisdiction of the Missouri Public Service Commission	CC Docket No. 97-166

RESPONSE OF SOUTHWESTERN BELL TELEPHONE COMPANY IN OPPOSITION TO MCI'S PREEMPTION PETITION

Pursuant to section 51.803(a)(3) of the Commission's rules, 47 CFR § 51.803(a)(3), SWBT submits this response to MCI's petition seeking preemption of the MPSC pursuant to section 252(e)(5) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 252(e)(5). For the reasons stated below, the Commission should deny MCI's petition.

INTRODUCTION

MCI requested interconnection in Missouri long before it was actually ready to begin negotiations. Indeed, until relatively recently, MCI has focused exclusively on reaching an interconnection agreement with SWBT in Texas, choosing effectively to ignore Missouri and the rest of SWBT's region. MCI has therefore proceeded exactly backwards. By prematurely starting the statutory "clock," MCI had to seek arbitration in Missouri before negotiations had even begun. The MPSC gave MCI the opportunity to present every issue it wanted arbitrated; MCI chose to present only a limited number of issues, leaving hundreds of others to be negotiated further. The MPSC arbitrated every issue that was properly presented to it and directed the

parties to negotiate a final agreement in light of its arbitration order. Beginning in early 1997, MCI finally committed to negotiating in earnest over the terms of interconnection in Missouri, and since that time, SWBT and MCI have made considerable progress.

The MPSC has complied with every statutory deadline applicable to it and has arbitrated every issue that MCI presented to it. It has expended significant resources fulfilling its responsibilities under the Act, including engaging in an effort over the past six months to analyze competing cost models and identify the critical inputs, all in order to set permanent rates for unbundled network elements and resale. Because the MPSC has not failed to do anything required of it, MCI has no grounds to invoke this Commission's authority under section 252(e)(5).

BACKGROUND

On March 26, 1996, MCI submitted letters simultaneously requesting interconnection in all five states in SWBT's region.[1] On April 8, SWBT forwarded a proposed nondisclosure agreement that it had used successfully with dozens of companies with which it has negotiated. Over one month later, MCI responded for the first time, proffering its own nondisclosure agreement which effectively provided no protection to SWBT's proprietary information. Immediately thereafter, SWBT revised its own proposal in order to resolve some of MCI's concerns and sent it back to MCI. Another month passed without a response, when MCI wrote to SWBT stating its position that it would sign only a limited nondisclosure agreement. Almost three months had passed since MCI first requested interconnection, and the two companies had had only two meetings at which substantive issues had even been discussed. The reasons for

[1]Affidavit of James R. Oxler ¶ 3 (attached).

MCI's delay are now apparent: MCI's negotiators were determined to reach an agreement first in Texas, so their stonewalling on the nondisclosure agreement was nothing but an excuse for delaying the start of negotiations that they were not ready to conduct.[2]

Fully aware that the "clock" was running, SWBT sent a letter to the MPSC on June 26, 1996, requesting a mediation of the dispute over the nondisclosure agreement.[3] On July 10, representatives from both SWBT and MCI met with representatives of the MPSC in an effort to resolve the impasse, but the mediation proved unsuccessful. One month later, MCI filed its petition for arbitration under section 252(b) of the Act, despite the fact that, in MCI's own words, the "inability to engage in any meaningful negotiations" has meant that "the positions of [Southwestern Bell] on virtually all of the items for which MCI is requesting arbitration are largely unknown to MCI."[4]

On September 17, 1996, the MPSC consolidated MCI's petition with that of AT&T and ordered that a joint "Issues Memorandum" be filed on behalf of SWBT, MCI, AT&T, and the Office of the Public Counsel ("OPC"). The MPSC ordered that "the issues memorandum shall clearly set out the position of each party on every contested issue."[5] The Issues Memorandum was filed on October 7, and the parties presented 41 discrete questions to be arbitrated by the MPSC. For example, issue number 6 asked, "Should SWBT be required to offer dark fiber at this

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[2]Id. ¶¶ 3-5.

[3]Exhibit A (SWBT's Letter Requesting Mediation).

[4]See MCI's Exhibit B attached to MCI's Petition (Petition of MCI for Arbitration and Mediation) at 7.

[5]Exhibit B (Order Granting Consolidation) at 2 (emphasis added).

time?" SWBT, AT&T, MCI, and OPC each wrote a paragraph presenting its views on this question.[6] Supporting testimony was also filed by the parties.

The Issues Memorandum concluded with a final question — issue number 42 — which asked, "What should be the other terms of interconnection?" This final "issue" was effectively a request by both AT&T and MCI to have their respective draft agreements adopted. Indeed, all that MCI wrote with respect to its views on issue number 42 was that the MPSC "should adopt the other terms and conditions expressed in MCI's proposed Interconnection Agreement." SWBT took the position that issue number 42 would require the MPSC to sort through the contracts submitted by AT&T and MCI, containing "literally hundreds of differences which would need to be identified and resolved, all without the assistance of the Parties . . . ."[7]

Between October 8 and October 17, the MPSC conducted formal hearings during which witnesses presented testimony on the various matters identified in the Issues Memorandum. The sum total of testimony presented on issue number 42 consisted of a question from MCI's attorney to Joanne Russell, one of MCI's negotiators: "So does it remain your proposal on behalf of MCI that the Commission adopt the terms and conditions set forth in [MCI's proposed draft] agreement?" She responded, "Yes, it is."[8]

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[6]Exhibit C (Issues Memorandum) at 11.

[7]Id. at 57.

[8]Exhibit D (excerpt of Russell testimony) at 1108.

On December 11, 1996, the MPSC issued its Arbitration Order, acting within the statutory deadline for resolving the issues set forth in the arbitration petition.[9] The MPSC set interim rates for unbundled network elements; it resolved how the parties were to interconnect their networks; it settled how SWBT should manage white page directory information and directory assistance information; it determined how parties could gain access to SWBT's poles, conduits, and rights-of-way; it determined the types of electronic access to operational support systems that would be required for pre-ordering, ordering, provisioning, maintenance and repair, and billing; and many other issues. Indeed, the MPSC resolved every issue with respect to which the parties had presented their competing positions. As to the "other terms of interconnection" that were the subject of "issue" number 42, the MPSC recognized that the failure of MCI and SWBT to agree on a nondisclosure agreement "has brought the arbitration of virtually every detail to the Commission's doorstep."[10] But the MPSC concluded that these details could get no further than its "doorstep" until the parties "complete the process by negotiating their final agreements in compliance with this Arbitration Order."[11]

Within a few weeks of the MPSC's Arbitration Order, all parties filed motions for clarification, modification, and rehearing. On January 22, 1997, the MPSC issued a supplemental order in which it set a deadline for establishing permanent rates for resale and unbundled network elements. The MPSC directed its staff to conduct a 16-week investigation beginning on February

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[9]47 U.S.C. § 252(b)(4)(C) (State commission "shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section").

[10]MCI's Exhibit F attached to MCI's Petition (December 11, 1996 Arbitration Order) at 47.

[11]Id. at 47-48.

10, focusing on "identifying the critical inputs and analyzing the costing models."[12] The MPSC then presented a detailed schedule of how it would analyze the cost models, and it set June 30, 1997 as its target for establishing permanent rates.[13]

Throughout February and March, representatives from MCI and SWBT were able to negotiate, for the first time, over the terms and conditions of an interconnection agreement in Missouri. Although significant progress was made during this period, there remained issues on which no agreement could be reached. MCI sought to enlist the MPSC's help in imposing on SWBT an artificial deadline for reaching a final agreement, but the MPSC refused to do so; as it stated in its original Arbitration Order, "[a]ny negotiated outcome inevitably rests on the good will and commitment of the negotiating parties."[14] SWBT took the position that negotiations had already yielded some meaningful results and that it would be appropriate, given the fact that none of the issues had been negotiated or arbitrated in the previous round, to present them, if necessary, to the MPSC for further arbitration.

MCI claimed instead that it was entitled to have the MPSC adopt its incomplete draft agreement in its entirety. On June 16, 1997, MCI submitted its proposed agreement. It was several hundred pages long and included issues that had neither been arbitrated nor contained in the draft agreement originally submitted as part of the earlier arbitration. MCI effectively asked that the MPSC go through the incomplete draft page by page and "resolve all disputed provisions

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[12]MCI's Exhibit K attached to MCI's Petition (Order Granting Clarification and Modification) at 9.

[13]Id. at 11.

[14]MCI's Exhibit F attached to MCI's Petition (December 11, 1996 Arbitration Order) at 47.

by approving the language proposed by [MCI] in the submitted Interconnection Agreement."[15] In its motion to strike all provisions of MCI's proposed agreement that were not arbitrated and on which the parties were not able to agree, SWBT argued that while it "negotiated all issues in good faith, and reached agreement on hundreds of issues which were not arbitrated, it is not appropriate to resolve these additional matters outside of the arbitration process."[16] In its most recent filing to the MPSC on this issue, SWBT explained in detail how MCI's June 16, 1997 proposed agreement effectively presented issues that had never been presented before to the MPSC.[17]

MCI's motion for approval of its interconnection agreement, together with SWBT's motion to strike the agreement, were only recently presented for resolution. SWBT's final brief was filed on July 28, 1997. Three days later, on July 31, 1997, the MPSC issued a final arbitration order, which denied MCI's motion to adopt its interconnection agreement and denied as moot SWBT's motion to strike the agreement. The MPSC then directed the parties to submit a revised interconnection agreement by September 30, 1997.[18] In light of these facts, MCI's assertion that the MPSC has "fail[ed] to act" within the meaning of section 252(e)(5) should not be taken seriously.

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[15]MCI's Exhibit P attached to MCI's Petition (MCI's Motion for Approval of Interconnection) at 4.

[16]MCI's Exhibit R attached to MCI's Petition (Motion to Strike) at 2.

[17]Exhibit E (SWBT's Response to MCI's Reply to Motion to Strike) at 9-16.

[18]Exhibit F (Final Arbitration Order (without attachments)) at 4, 5.

ARGUMENT

This Commission has explicitly rejected "an expansive view of what constitutes a state's 'failure to act.'"[19] Instead, it has interpreted "failure to act" to mean "a state's failure to complete its duties in a timely manner"; this Commission will therefore exercise its preemption authority under section 252(e)(5) only "where a state commission fails to respond, within a reasonable time, to a request for mediation or arbitration, or fails to complete arbitration within the time limits of section 252(b)(4)(C)."[20]

There is no dispute that the MPSC responded within a reasonable time both to the request to mediate the issue over the nondisclosure agreements in July 1996 and to arbitrate the properly presented, unresolved issues in October 1996. The question is whether the MPSC has "resolve[d] each issue set forth in the petition and the response . . . [and] conclude[d] the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section."[21] This it clearly has done.

Congress gave explicit directions regarding the way a party must present to the State commission any unresolved issues for arbitration:

> A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning —

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[19]First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15,499, 16,128 [¶ 1285] (1996), modified on reconsideration, 11 FCC Rcd 13,042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, No. 96-3321, 1997 U.S. App. LEXIS 18183 (8th Cir. July 18, 1997).

[20]Id.

[21]47 U.S.C. § 252(b)(4)(C).

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.[22]

It is the responsibility of the petitioning party to present the open issues in such a way that the State commission is able to consider and resolve them. MCI clearly failed to comply with this requirement with respect to any of the 70 or so issues it now claims the MPSC improperly left unresolved.[23]

On August 16, 1996, MCI filed its petition for arbitration, and it attached a document entitled "MCI Requirements for Intercarrier Agreements." Even a cursory review of this document reveals that it is nothing but MCI's "wish list" — MCI did not even attempt to comply with the requirement of section 252(b)(2)(A)(ii) that it present "the position of each of the parties" with respect to the unresolved issues. Simply put, the hundreds and hundreds of proposed contractual terms that MCI attached to its arbitration petition were never "set forth in the petition" in a manner that would have permitted the MPSC to consider them; not only would it have been entirely unreasonable to expect the MPSC to wade through nearly 200 pages to identify all of the unresolved issues, but the MPSC would have lacked the authority to do so: "The State commission shall limit its consideration of any petition . . . to the issues set forth in the petition and in the response . . . ."[24]

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[22] Id. § 252(b)(2)(A).

[23] See MCI Petition at 8-13.

[24] 47 U.S.C. § 252(b)(4)(A).

Although the MPSC was not required to give MCI another opportunity to present the issues it wanted arbitrated, the MPSC nevertheless permitted MCI to do just that when it ordered the parties to submit a joint Issues Memorandum. The MPSC concluded that consolidation of MCI's and AT&T's petitions was in the public interest and found that the issues to be presented by all parties were "sufficiently similar so that consolidation will allow these issues to be presented to the Commission once instead of in two separate proceedings."[25] The MPSC then explicitly required that the Issues Memorandum "clearly set out the position of each party on every contested issue."[26] The parties complied with this requirement with respect to the first 41 issues that were set forth in the Issues Memorandum. With respect to each of those issues, the MPSC carried out its statutory duty to consider and resolve them within the statutory deadline.

As for issue number 42, MCI stated only that the MPSC "should adopt the other terms and conditions expressed in MCI's proposed Interconnection Agreement," a copy of which was attached to the prepared testimony of one of its witnesses. The Agreement — which is labeled "Draft for Discussion" — is hundreds of pages long and replete with blanks and references to "interim solutions" that are "to be negotiated." Under no circumstances could this document reasonably have been viewed as a clear statement of every contested issue with the position of each party set out for the MPSC's consideration. The MPSC quite properly treated this draft agreement for what it was — a contribution to further negotiations that the MPSC ordered completed in compliance with its arbitration order. It surely never occurred to the MPSC that MCI expected it to comb through the draft agreement, first identifying the hundreds of issues

[25]Exhibit B (Order Granting Consolidation) at 2.

[26]Id.

implicitly raised throughout, then deciding how to resolve each one of them without the benefit of even a statement of SWBT's position, let alone any testimony or other evidence.

In its preemption petition, MCI lists 65 "specific unresolved issues" that it claims to have presented to the MPSC back in the fall of 1996, when it filed its petition for arbitration. MCI includes a section reference to each of the terms and conditions, reflecting where in the draft agreement it can be found. But the references are all to the draft agreement submitted to the MPSC on June 16, 1997.[27] In a recent filing with the MPSC, SWBT has carefully compared the recent draft agreement with the version that was submitted to the MPSC as part of the arbitration in October 1996, and many of the issues contained in the 1997 version were never included in any prior drafts.[28] Therefore, even accepting for the moment MCI's incredible suggestion that it could have effectively presented every issue for arbitration by attaching the draft agreement to its witnesses' testimony, it is clear that it did not present all of the issues it now claims to have presented before June 1997. The MPSC can hardly be faulted for failing to resolve issues that were never even implicitly set forth in the petition for arbitration.

Moreover, the MPSC recognized that the parties had failed to negotiate the terms of an interconnection agreement prior to MCI's request for arbitration.[29] In order to satisfy Congress's overarching goal of reaching negotiated agreements whenever possible, the MPSC reasonably

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[27]In a footnote, MCI mistakenly refers to the "draft contract submitted to the Missouri commission on June 16, 1996," MCI Petition at 7 n.1 (emphasis added). Although this may simply be a typographical error, it is exceedingly misleading to suggest that all of these issues have been pending before the MPSC for 14 months when, in reality, they were presented only six weeks ago.

[28]Exhibit E (SWBT's Response to MCI's Reply to Motion to Strike) at 9-16.

[29]MCI's Exhibit F attached to MCI's Petition (December 11, 1996 Arbitration Order) at 47.

concluded that the parties should meet and negotiate the remaining terms of interconnection. Indeed, as the United States Court of Appeals for the Eighth Circuit recently stated, "[t]he structure of the Act reveals the Congress's preference for voluntarily negotiated interconnection agreements between incumbent LECs and their competitors over arbitrated agreements. . . . [T]he Act establishes a preference for incumbent LECs and requesting carriers to reach agreements independently and . . . establishes state-run arbitrations to act as a backstop or impasse-resolving mechanism for failed negotiations."[30] It is not that negotiations had failed in Missouri; it is rather that they had yet to take place.[31] Under these somewhat unusual circumstances, the MPSC reasonably ordered the parties to do what Congress intended them to do in the first place.

As explained in the attached affidavit of James R. Oxler, the negotiations since the Arbitration Order have made substantial progress.[32] After many months, MCI's negotiators finally turned their attention to negotiating an agreement in Missouri; while there remain unresolved issues that may need to be arbitrated, the process is now working as Congress intended. MCI's claim that it is somehow entitled to have a firm deadline imposed on the completion of a final agreement is particularly disingenuous in light of its unwillingness seriously to enter into negotiations in Missouri until approximately 10 months after it formally requested interconnection.[33] Moreover, Congress did not impose a deadline on reaching a final agreement

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[30]Iowa Utils. Bd. v. FCC, No. 96-3321, 1997 U.S. App. LEXIS 18183, at *37 (8th Cir. July 18, 1997).

[31]Oxler Affidavit ¶ 3.

[32]Id. ¶¶ 13-16.

[33]Id. ¶¶ 3-4, 8, 11.

after arbitration; the task of incorporating the arbitration decision into a specific framework can be difficult and time consuming.

Furthermore, beginning in early February 1997, the MPSC's arbitration advisory staff spent months reviewing cost data in order to develop permanent rates for unbundled network elements and resale. The MPSC issued its Final Arbitration Order announcing permanent rates on July 31, 1997. It is simply outrageous to suggest, as MCI does throughout its preemption petition, that the MPSC is failing to meet its responsibilities when its staff has expended so much time and effort reviewing various cost models and analyzing appropriate inputs in order to establish these permanent rates.[34] That the MPSC required additional time to complete this complicated task is hardly grounds for concluding that it has failed to carry out its responsibilities under the Act.

MCI's preemption petition should be denied. The MPSC resolved each issue that was clearly set forth in the arbitration petition within the statutory deadline. It did not, nor was it required to, dig through MCI's incomplete draft agreement and, first, identify every conceivable issue concealed within and, second, try to resolve every issue without even knowing SWBT's position. MCI had the clear, statutory responsibility as the petitioning party to present the positions of the various parties on each of the unresolved issues; to the extent it failed to do so, the MPSC was not required to act at all. The MPSC did encourage the parties to negotiate any remaining issues and to return with a completed, final agreement. The Final Arbitration Order issued on July 31, 1997, has established a sixty-day time frame in which to complete negotiations. Since negotiations in Missouri really began in earnest only after the MPSC issued its initial

[34]Affidavit of Alan G. Kern ¶¶ 6-12 (attached).

arbitration order and its order granting clarification, the MPSC's position was entirely consistent with Congress's intent to encourage negotiated agreements. To be sure, if current negotiations do not yield a complete agreement, MCI can seek arbitration of any remaining issues.

CONCLUSION

For the foregoing reasons, MCI's petition for preemption of the MPSC's jurisdiction under section 252(e)(5) should be denied.

Respectfully submitted,

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August 4, 1997

AFFIDAVITS

Before the
Federal Communications Commission
Washington, D.C.

In the Matter of

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc.'s Petition for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996	)))))	CC Docket No. 97-166

AFFIDAVIT OF JAMES R. OXLER

I, James R. Oxler, having been duly sworn, state upon my oath the following:

1. I have been employed by Southwestern Bell Telephone Company (SWBT) for 26 years. My present job title is Director of Billing and Collections, and my responsibilities include negotiating interconnection agreements with MCI Telecommunication Corporation and MCImetro Access Transmission Services, Inc. (MCI) in each of the states in which SWBT provides local exchange telecommunications services, including Missouri.

2. I have been involved in negotiations with MCI for interconnection agreements since May 1996.

3. While MCI simultaneously requested SWBT to negotiate interconnection agreements in Texas, Missouri, Oklahoma, Kansas, and Arkansas on March 26, 1996, Texas was the only state in which MCI actively pursued negotiations. In fact, MCI did not negotiate at all in Arkansas, Kansas, and Oklahoma; other than discussions over a nondisclosure agreement, there were no negotiations in Missouri until early 1997.

4. MCI refused to sign SWBT's nondisclosure agreement, the same agreement (with minor variations) signed by dozens of other local service providers (LSPs) prior to engaging in negotiations with SWBT. In fact, at the time, MCI was the only company that refused to sign SWBT's standard nondisclosure agreement. On April 8, 1996, SWBT sent a copy of its standard nondisclosure agreement to MCI for its review. MCI waited until May 13 to respond to SWBT and then simply proffered its own version. SWBT responded two days later with a revised draft, but once again, MCI delayed for over a month before it responded. On June 18, MCI took the position that it would not agree to SWBT's proposal and insisted that only its own nondisclosure agreement would be acceptable.

5. In an effort to resolve the impasse and begin substantive negotiations within the statutory time period, SWBT sent a letter to the Missouri Public Service Commission (MPSC) on June 26, 1996, requesting mediation of the dispute over the nondisclosure agreement. On July 10, representatives from both SWBT and MCI met with MPSC staff in an effort to resolve the impasse, but the parties were unable to reach an agreement on which nondisclosure agreement to use.

6. MCI filed its petition for arbitration in Missouri on August 16, 1996, notwithstanding the fact that no meaningful negotiations had occurred on any substantive issue. MCI's arbitration petition was consolidated with AT&T's petition, which was then pending.

7. The arbitration was conducted between October 8 and October 17, 1996 to resolve the issues that MCI and AT&T had presented to the MPSC for resolution. The MPSC issued its arbitration decision on December 21, directing the parties to negotiate a final agreement in compliance with the terms of the arbitration order.

8. On January 8, 1997, William M. Pitcher of MCI wrote to Jack Frith of SWBT (who forwarded the letter to me) requesting that SWBT begin negotiating an agreement in Missouri. He insisted that negotiations begin from the draft agreement that MCI had recently submitted to the Texas Public Utility Commission (Texas PUC) for approval. I wrote back to him on January 14, explaining that the draft agreement that MCI had submitted in Texas contained so many provisions that were unacceptable to SWBT that it simply would not be a useful starting point for meaningful negotiations in Missouri.

9. The central problem with MCI's draft Texas agreement was that it did not accurately reflect the discussions and negotiations that had taken place. MCI insisted on retaining control over the drafting of the document, but when MCI submitted its proposed interconnection agreement to the Texas PUC on December 30, 1996, there were literally hundreds of provisions where MCI had inaccurately represented SWBT's position. The Texas PUC agreed and ordered MCI to remove over one hundred provisions that MCI had unilaterally and unfairly inserted into the contract. MCI's sloppiness in conforming its draft agreement

to the terms of the Texas PUC's orders made me very wary of using that agreement as a starting point for our Missouri negotiations.

10. I suggested, instead, that we begin negotiating from another LSP agreement that had already been signed. MCI absolutely refused to negotiate at all unless it could work from its Texas draft agreement. I finally agreed that we would use MCI's document as a starting point in Missouri, but I insisted that MCI give SWBT an equal opportunity to present its proposed language and to review any of SWBT's proposed modifications to MCI's standard form contract language.

11. In February 1997, just as negotiations in Missouri were beginning, I and other negotiators from SWBT were still deeply involved in reviewing the SWBT-MCI interconnection agreement in Texas, spending a significant amount of our time simply verifying that MCI had accurately conformed the contractual language to the Texas PUC's arbitration order.

12. MCI's conduct throughout the proceedings in Texas set a tone for all future negotiations. In light of the experience in Texas, the SWBT negotiators have been very careful to confirm the accuracy of every single modification made by MCI to the draft in Missouri.

13. During negotiations in February and March 1997 in Missouri, SWBT made up to twenty subject matter experts (SMEs) available to address different parts of the agreement. Typically, both sides would meet, usually with SMEs, to hammer out contract language in draft form covering technical interconnection matters. Then the parties would adjourn while

the draft language was typed and distributed for review. Each party's SMEs would then review and correct the language.

14. During this period of negotiation, significant progress was made. MCI and SWBT succeeded in addressing many issues and resolving disputes over matters essential to any interconnection agreement.

15. MCI unilaterally attempted to dictate a schedule for completing the Missouri agreement. This was particularly unreasonable given the fact that while the SWBT negotiators were trying to determine what MCI's positions were in Missouri, they were also conforming MCI's draft agreement in Texas, responding to MCI's request to negotiate a completely separate agreement for the exchange of traffic between Memphis, Tennessee and West Memphis, Arkansas, and meeting with MCI's own operations people to discuss implementation of the Texas agreement.

16. We continued to negotiate over the Missouri agreement through May 1997. Although the Missouri negotiations have been difficult, they have also proven to be the most successful negotiations that SWBT and MCI have conducted. Despite the progress we had made, MCI filed a draft interconnection agreement with the MPSC on June 16, 1997, requesting that the MPSC simply adopt MCI's terms and impose them on SWBT. We continue to believe that it would be inappropriate for the MPSC to resolve contested issues that have never been presented before and with respect to which the MPSC lacks sufficient record evidence.